

Amendments to the Drawings:

The drawing sheet attached in connection with the above-identified application containing Figure 1a is being presented as a new formal drawing sheet to be substituted for the previously submitted drawing sheet. Figure 1a has been amended. Appended to this amendment is an annotated copy of the previous drawing sheet which has been marked to show the changes presented in the replacement sheet.

The specific changes which have been made to Figure 1a are the addition of the nozzle 23 with its reference character and corresponding leader line and the addition of the front windshield 25 with its reference character and corresponding leader line.

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow. After amending the claims as set forth above, claims 16-24 are now pending in this application.

Applicants wish to thank the Examiner for the careful consideration given to the claims.

Drawings

An objection has been made to the drawings because the control flap being in the distribution space of claim 1, the vehicle window of claim 1, the defrosting nozzle of claim 1, and the gear mechanism of claim 5 are not shown in the drawings. Claim 1 has been canceled, but Fig. 1a has been amended to show schematically a vehicle window 25 and the defrosting nozzle 23 as recited in claim 16. Also, claim 5 has been canceled. For at least these reasons, favorable reconsideration of the objection is respectfully requested.

Rejection based on 35 U.S.C. 112

Claims 1-15 are rejected under 35 U.S.C. 112. These claims are canceled, which renders the rejection of these claims moot. For at least this reason, favorable reconsideration of the rejection is respectfully requested.

Rejection based on references

Claims 1-3, 6-8, and 13-15 are rejected under 35 U.S.C. §102(b) as being anticipated by FR 2737156 ("Gilles"). Claims 9-12 are rejected under 35 U.S.C. §103(a) as being unpatentable over Gilles. Claims 4-5 are rejected under 35 U.S.C. §103(a) as being unpatentable over Gilles in view of U.S. Patent 6,684,137 ("Tsurushima"). These claims are canceled, which renders the rejections of these claims moot. For at least this reason, favorable reconsideration of the rejections is respectfully requested.

Allowability of claims 16-24

Claim 16 recites, among other things, a fan, an evaporator, a distributor space arranged after the evaporator, control flaps between a first flow passage and a second flow passage, a mixing chamber, a heat exchanger arranged in the second flow passage for heating the second partial air stream, air exit passages, at least one bypass passage, and a mixing flap

assigned to the at least one bypass passage for controlling the warm air stream through the bypass passage. The mixing flap and control flaps are arranged axially on a common pivot axle. The mixing flap extends within regions in which the at least one bypass passage runs and the control flaps are formed in regions other than the at least one bypass passage. The mixing flap associated with the bypass passage is curved convexly in cross section and the control flaps are curved concavely in cross section. Claim 22 recites similar and/or analogous features.

None of Gilles, Tsurushima, or any combination thereof teaches or suggest all the features of claim 16 or 22. For example, neither Gilles nor Tsurushima teaches or suggests that the mixing flap and control flaps are arranged axially on a common pivot axle with the mixing flap associated with the bypass passage being curved convexly in cross section and the control flaps being curved concavely in cross section. Because Gilles and Tsurushima does not teach or suggest this combination of features, claims 16 and 22 are allowable.

It is noted that the PTO asserted in relation to the rejection of now canceled claims 9-12 that “it would have been obvious mater [sic] of design choice...to have curved flaps (concave or convex) instead of straight...because applicant has not disclosed that curved flaps provides an advantage is used for particular purpose or solves a stated problem.” A rejection based on such grounds is improper. The rejection is improper because no prior art has been set forth teaching or suggest the mixing flap being curved convexly and the control flaps being curved concavely. The Supreme Court in *KSR Int’l Co. v. Teleflex, Inc.* has not removed the requirement that the prior art reference (or references when combined) must teach or suggest all the claim limitations. Also, MPEP 2143 suggests that prior art must disclose all the features of the claimed invention as all the various rationales suggest that each element of a claim has to be known in the art before it is combined with the primary reference. The PTO’s unsupported statements that it would have been obvious matter of design choice to have curved flaps (concave or convex) instead of straight does not establish that such features, as they interact with the other features of claim 16 or 22, exist in the prior art. Indeed, the statement falls well short of providing prior art teaching or suggesting such a feature in combination with the other elements of claim 16 or 22.

Furthermore, the PTO attempts to relieve itself of the responsibility of finding prior art by asserting that the onus is on the Applicants to show that the features not found in the

cited prior art provide an advantage that is used for a particular purpose or solves a stated problem. Such a shifting of the burden is improper because the PTO must establish all features are disclosed or suggested in the prior art to make a rejection based on prior art. Also, the statement is inaccurate as the specification clearly provides in the paragraph starting at page 6, line 28 of the specification:

According to another advantageous configuration of the invention, the mixing flap and control flap are arranged on a common pivot axle, with the mixing flap extending within regions in which the bypass passage runs, while the control flap is formed in the other regions. This corresponds to the desire for an inexpensive structural configuration of the air-conditioning device. According to a further advantageous configuration, it is possible for the flaps to extend in the axial direction of the common pivot axle and to be curved in cross section with respect thereto. The surface curvature of the control flaps and at least one mixing flap advantageously allows structural properties of the configuration of the flaps to be combined with a simultaneously improved routing of the air stream and position or orientation of sealing surfaces. In this case, according to an advantageous configuration, the flaps are articulatively mounted on the pivot axle by means of pivot arms which widen out in the shape of a segment of a circle and are preferably also arranged at the edge. Another advantageous refinement provides for the flaps which serve as mixing flap and are assigned to a bypass passage to be curved convexly. The flaps which serve as control flap and are used to divide the air stream into first and second partial air streams may according to configurations of the invention be curved concavely. (Emphasis added.)

Furthermore, the allegation that it would have been obvious to have curved flaps (concave or convex) instead of straight does not address the fact that the mixing flap are curved convexly and the control flaps are curved concavely. For these reasons, any rejection based on the above rationale is improper, and claims 16 and 22 are allowable over Gilles and Tsurushima.

Claims 17-21 and 23-24 depend from and contain all the features of claim 16 or 22, and are allowable for the reasons indicated above, without regard to the further patentable features contained therein.

For at least these reasons, allowance of claims 16-24 is respectfully requested.

Conclusion

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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By P.D.S.

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